

City Heights Project Timeline

In the 2000s, the City pursued and ultimately persuaded City Heights to annex the land into the City of Cle Elum. City promised the following benefits:

- Provide the City more influence over residential growth
- Faster permitting compared to the County.
- Allow for integrated infrastructure, stormwater controls, trails, and open space development.
- Provide the developer with certainty of development timing, cost, and regulations .
- The Development Agreement (DA) was to provide the full process for implementing the project.
- The project will not require reconsideration of elements covered in the EIS, Master Site Plan or the DA.
- Public open houses and public hearings were completed and negotiated condition included in the Development Agreement

2004-2011: Draft Development Agreement, EIS work

- Citizen and agency comments , public notices, hearings, and review. Participation from
 - o Residents and neighbors, city staff and city departments input
 - o State and Federal input (health, wildlife, natural resources, water resources, etc)
- Negotiation of agreement with City.
 - o This process allowed the City to negotiate in ways it could not do otherwise.
 - o City goals were density, open space, public amenities and \$10mm in developer payments.
 - o Police, fire, schools, sewer, wildlife, traffic, etc all consulted and provided input.

2011: The DA is approved and vested, all conditions and terms are finalized.

- After hundreds of citizen comments and multiple Planning Commission hearings ,the City Council conducted 5 weeks of Council meetings.
- After final negotiations, the City Council approved the DA in November 2011.
- \$2mm spent on environmental review.
- Developer agrees to pay over \$10mm in mitigation fees.

- The City’s role is to confirm applications comply with conditions in the DA, no additional design or public planning process, reviews of phases are expedited
- City has 14 days to deem applications complete and 45 days to approve (or deny).
- This provides predictability under the Agreement to both parties.
- No new Conditions of Approval are allowed other than as outlined in DA.

2020: Phase I is submitted. The city fails to meet the terms of the Development Agreement contract.

- The remaining DA process is administrative and project input concluded in 2011. Instead, the city communicates their desire to re-plan, re-condition, and re-negotiate the DA.
- This costs the project millions of dollars in missed opportunity in strong market (2020 to 2022)

2020: City continued to miss timelines and continued to violate contract.

- The City meets no Development Agreement timelines, asks for state and federal agency input.
- The City writes that they will comply with timelines if developer will renegotiate and add new conditions beyond those allowed by the Development Agreement.

The project misses an entire construction season

- infrastructure for the planned 70 homes is unable to proceed; causing millions of dollars in delays in
 - Lost profits
 - Increased construction costs
 - Negotiations
 - Holding costs
 - Conflict resolution (legal, etc)(see expert witness damages reports)

2020: With no choice left, first arbitration is filed in September, to obtain performance per the DA. The judge rules:

- *“City Heights motion granted in its entirety.”*
- *“City of Cle Elum motion denied in its entirety.”*
- *Timelines apply (14/45)*
- *No public hearings*

2021: City ignores the judge's Order and continues delays.

- City takes 336 days rather than the allowed 45 days to issue approval of Phase I
- Developer submits Phase II for approximately 68 homes.
- City takes 318 days to issue Phase II approval.
- City continues to violate Judge's order, with attempted new conditions and processes.

November 15th, 2021: Second arbitration hearing

- City Heights files 2nd arbitration for specific performance and damages for the 2-year delay.
- City Heights seeks to settle and drafts Memorandum of Understanding to avoid arbitration.
- The City declines MOU.

2022

April 8th, Arbitrator rules in City Heights favor:

- *“City Heights Motion granted, and City's Motion is denied.”*
- *“City must meet 14 day and 45 day timelines”*
- *City cannot apply new Conditions of Approval*
- *City Heights request for Special Master is granted.*

Phase I has now missed two years of construction, and Phase II has missed one full year of construction.

June 10th, 2022

The City signs the MOU offered by City Heights before costly arbitration hearing. MOU includes:

- Ratification of the same 14/45-day clocks.
- Limited fees agreement for processing applications.
- City accepts liquidated damages liability in the instance of any further delay.
 - a. \$10,000 per day of delay.
- The city agrees developer is damaged by delays and city's failure to comply.
- The city must replace Dohrn as project manager.

2023

- City Heights damages have grown to \$25mm by early 2023.
- A second mediation is attempted, unsuccessful.

- Phase I is now over 2 years behind schedule and Phase II is over 18 months behind schedule.
- City Heights home/land estimated lost revenue for 2020, 2021, and 2022 is \$54mm.
- mayor signs release with WCIA ‘from all claims that exist or may exist’ for payment to City of \$4.3mm. However, City appears to have additional coverage of \$15mm risk pool.
- The city continues to spend these funds without offering them for settlement.

November 8, 2023: City files Motion for Summary Judgement (MSJ)

- March 7th hearing date.
- MSJ asserts that City has no responsibility for Phase I and II delays

2024

February 8th, City Heights hosts Town Hall, distributes FAQ for citizens

- Provide open conduit for stakeholders to learn about the project and ongoing litigation.
- Answer technical and practical questions about the project.
- Promote ways to get involved including future city parks and open spaces.

March 7th, City’s Motion to Dismiss denied by Judge Kallas.

March 7th, 2nd Town Hall

- Attendees at the Feb 8th Town Hall asked the largest number of questions related to water.
- Town Hall will be focused on answers about water related to the project.
- City Heights remains hopeful the new administration will accept City Heights’ offer to meet and explore settlement before expensive arbitration.

- City Heights remains committed to settlement options to avoid litigation and costly legal fees from continued rulings against the City of Cle Elum that would meet the fiduciary obligations City Heights has to its investors and avoid a situation similar to Mammoth Lakes (see case articles)

March to September 2024

- City Heights remains hopeful the new administration will make a good faith effort to explore settlement before expensive arbitration.
- City Heights remains committed to settlement options to avoid litigation and costly legal fees from continued rulings against the City of Cle Elum.

October 2024- with no settlement achieved, the financial dispute goes to Binding Arbitration

November 2024- Judge rules City has breached the agreement and City Heights awarded \$22mm

November 2024-

- After Award is issued by arbitrator, City Heights reaches out to City to offer opportunity to work together to create a feasible payment plan
- City of Cle Elum indicates that unless City Heights delays collection efforts, City will file a request for bankruptcy with the court